IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

WP(C).No. 30711 of 2006(F)

OS.39/2005 of PRL.SUB COURT,IRINJALAKUDA

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PETITIONER:

MRS. MARY DEVASSY, D/O. LATE ANTHONY,
AGED 57 YEARS, RESIDING AT ARIKADAN HOUSE,
KAROOR DESOM, ALOOR VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.M.R.SARIN
SRI.HARISH GOPINATH
SRI.V.VINAY MENON
SRI.KIRAN SANKAR

RESPONDENTS:

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1. MR. DOMINIC M.A., S/O. LATE ANTHONY,
MANJALI HOUSE, VARAKARA DESOM, AMBALLOOR VILLAGE,
MUKUNDAPURAM TALUK.

2. MRS. SELINA JOSE, W/O. A.I.JOSE,
ARAKAL HOUSE, ELTHURUTH DESOM, KARYATTUKARA,
ARANATTUKARA VILLAGE, THRISSUR TALUK.

3. MR. JOSEPH P.V., H/O. LATE AMMINI,
PUTHUSSERY HOUSE, PATTELIPURAM DESOM,
ALUVA VILLAGE, ALUVA TALUK.

4. MRS. SANTHA, D/O. LATE AMMINI,
PUTHUSSERY HOUSE, PATTELIPURAM DESOM,
ALUVA VILLAGE, ALUVA TALUK.

5. MR. JOSE, S/O. LATE AMMINI,
PUTHUSSERY HOUSE, PATTELIPURAM DESOM,
ALUVA VILLAGE, ALUVA TALUK.

6. ANTHONYKUTTY, S/O. MANJALI DOMINI,
VARAKARA DESOM, AMBALLUR VILLAGE,
MUKUNDAPURAM TALUK.

7. GEORGEKUTTY, S/O. DOMINI MANJALI,
VARAKARA DESOM, AMBALLUR VILLAGE,
MUKUNDAPURAM TALUK.

8. PAUL,
VARAKARA DESOM, AMBALLUR VILLAGE,
MUKUNDAPURAM TALUK.

9. NAIJO,
VARAKARA DESOM, AMBALLUR VILLAGE,
MUKUNDAPURAM TALUK.

10. SHAIJO, REP. BY
POWER OF ATTORNEY - ANTHONYKUTTY,
VARAKARA DESOM, AMBALLUR VILLAGE,
MUKUNDAPURAM TALUK.

11. SHAIJI, D/O. DOMINI,
VARAKARA DESOM, AMBALLUR VILLAGE,
MUKUNDAPURAM TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.Sasidharan Nambiar, J.

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W.P.(C)No.30711 of 2006

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Dated this the 21st day of November, 2006.

JUDGMENT

Petitioner is the plaintiff in O.S.No.39 of 2005. Under Ext.P4 order in I.A.No.1184 of 2006, learned Sub Judge allowed respondents 6 to 11 to implead as additional defendants in the suit. As per I.A.No.1184 of 2006, respondents 6 to 11 sought permission to get themselves impleaded in the suit contending that first defendant in the suit was not heard for the last 20 years and therefore, they are entitled to come up on record.

2. Case of the petitioner is that as the case was that first defendant was not heard for more than seven years and before conducting an enquiry and a finding provided under Section 107 of the Indian Evidence Act, respondents 6 to 11 should not have been impleaded by the court below inspite of Ext.P3 objection filed.

3. Court below under Ext.P4 order held that the petition is not opposed and therefore, the order is to be quashed.

4. On hearing learned counsel appearing for the petitioner, I do not find it necessary to interfere with Ext.P4 order exercising the extraordinary jurisdiction of this Court under Article 227 of the Constitution.

5. Question whether the first defendant was not being heard for the last seven years and whether he is presumed to be no more as provided in Section 107 of the Indian Evidence Act, are matters to be decided in the suit. The fact that respondents 6 to 11 were impleaded does not mean that first respondent is no more. Question whether respondents 6 to 11 would derive any right and whether first defendant is alive or not, are all matters to be decided in the suit.

Writ Petition is disposed of accordingly.

M.Sasidharan Nambiar,
Judge.

ess 21/11

M.Sasidharan Nambiar, J.
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W.P.(C)No.30711 of 2006
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JUDGMENT

21st November, 2006.